Not Designated for Publication

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 08-187

ANTHONY TERRELL JOHNSON APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** October 8, 2008 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CR2006-971] HONORABLE WILLARD PROCTOR, JR., JUDGE AFFIRMED

SARAH J. HEFFLEY, Judge

Appellant Anthony Terrell Johnson shot and killed Dan Green and Steven Craig on January 12, 2006. Appellant claimed that he acted in self defense, but the jury disagreed and found him guilty of two counts of first-degree murder. Appellant purports to appeal his convictions, arguing that the evidence is not sufficient to support the jury's findings of guilt. For the reasons discussed below, we affirm without addressing appellant's argument because we lack jurisdiction to do so.

At the sentencing phase of trial, the jury recommended that appellant serve concurrent sentences of twenty-five years in prison on each count of first-degree murder. The trial court accepted the jury's recommendation and sentenced appellant in open court to concurrent terms of twenty-five years' imprisonment (300 months), adding that appellant was entitled to jail-time credit of 546 days. A judgment and commitment order was entered on July 3, 2007. In it, appellant was sentenced to concurrent terms of 250 months on each count of first-degree murder. Additionally, the judgment did not include any jail-time credit. Appellant

did not file a notice of appeal from this judgment and commitment order.

The trial court entered an amended judgment and commitment order on November 13, 2007. By this order, appellant was sentenced to concurrent terms of 300 months in prison with jail-time credit of 546 days. On November 15, 2007, appellant filed a notice of appeal, stating that he was appealing "from the judgment."

Because appellant did not file a timely notice of appeal from the original judgment, the question becomes whether an appeal of appellant's convictions is salvaged by his filing a notice of appeal from the amended order. The answer to that question is no.

Trial courts retain the authority to modify a judgment to make it speak the truth or to show that which actually occurred. *Williford v. State*, 371 Ark. 23, ___ S.W.3d ___ (2007); *McCuen v. State*, 338 Ark. 631, 999 S.W.2d 682 (1999). There is no time limitation for a court to act when correcting a judgment to reflect that which actually occurred. *State v. Dawson*, 343 Ark. 683, 38 S.W.3d 319 (2001). To correct an erroneous judgment to make it speak the truth, the proper course is for the entry of a *nunc pro tunc* order. *Willis v. State*, 90 Ark. App. 281, 205 S.W.3d 189 (2005). In deciding whether a judgment is a *nunc pro tunc* order or an amendment, we look beyond the form of the judgment to determine its true nature. *Holt Bonding Co. v. State*, 353 Ark. 136, 114 S.W.3d 179 (2003).

The case of *Holt Bonding Co. v. State* involved a bond forfeiture and is pertinent to the issue under consideration. Holt Bonding Company was listed in the style of the case and the forfeiture order as the respondent bonding company, but in the body of the order, judgment was entered against "Exit Bail Bond Company." The trial court subsequently entered another forfeiture order reflecting that judgment was entered against "Holt Bonding Company." This

order also contained the handwritten notation "(amended) to show correct bonding Co."

The supreme court concluded that the latter judgment was a *nunc pro tunc* order under Ark. R. Civ. P. 60(b) because it corrected a clerical error so as to make the record speak the truth. With that determination, the supreme court refused to address Holt Bonding Company's issues that arose from the forfeiture proceeding because no notice of appeal had been filed from the original forfeiture order. The court noted:

> An appeal from a *nunc pro tunc* order "is not from the original order, or judgment, but from the order purporting to correct it." *Kindiger v. Huffman*, 307 Ark. 465, 466-67, 821 S.W.2d 33, 34 (1991). Thus, an appeal from a *nunc pro tunc* order contests the propriety of the corrections made and may not be used to challenge issues that should have been appealed from the original order but were not. *Id.*; *see also Griggs v. Cook, supra.*

Id. at 141, 114 S.W.3d at 183.

In order to construe judgments, we look for the trial court's intention, which is derived from the judgment and the record. *Lewis v. State*, 336 Ark. 469, 986 S.W.2d 95 (1999). The trial court in this case sentenced appellant in open court to concurrent terms of twenty-five years in prison and gave appellant 546 days of jail-time credit. The original judgment and commitment order dated July 3, 2007, however, sentenced appellant to concurrent terms of 250 months in prison, instead of 300 months, and made no provision for jail-time credit. The amended judgment and commitment order of November 13, 2007, set appellant's sentences at concurrent terms of 300 months with credit for 546 days. It is apparent that the second judgment was intended to correct the clerical errors in the original judgment to reflect the actual sentences imposed by the trial court in open court. We thus conclude that the November 13, 2007, judgment and commitment order was a *nunc pro tunc* order. *Holt Bonding Co. v. State, supra.* Consequently, we are not able to address the sufficiency-of-the-

evidence argument appellant raises in this appeal because appellant did not file a notice of appeal from the original judgment and commitment order. *Id.* Because appellant raises no issue on appeal contesting the corrections made in the order entered on November 13, 2007, there is nothing for us to review, and we affirm.

Should appellant desire to appeal his convictions, it will be necessary to file a motion for a belated appeal with the supreme court. *See Bryant v. State*, ___ Ark. ___, ___ S.W.3d ___ (Sept. 25, 2008).

Affirmed.

HART and GLADWIN, JJ., agree.